



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 29848738

Date: MAR. 1, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a civil engineer, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Texas Service Center Director denied the petition, concluding the Petitioner did not establish he had a major, internationally recognized award, nor did he demonstrate that he met at least three of the ten regulatory criteria. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131–32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). Before the Director, the Petitioner claimed he met the following six categories:

- (ii), Membership in associations that require outstanding achievements;
- (iv), Participation as a judge of the work of others in the same or allied field;
- (v), Original contributions of major significance;
- (vi) Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director decided that the Petitioner met two of the evidentiary criteria relating to judging the work of others in the same or allied field and commanding a high salary for services, but that he had not satisfied any of the remaining categories. On appeal, the Petitioner maintains that he meets the evidentiary criteria relating to each of the areas upon which the Director issued an adverse determination. After reviewing all the evidence in the record, not only do we agree with the Director that the Petitioner has satisfied the criteria regarding judging the work of others in the same or an allied field and high remuneration for services, but we also conclude he satisfies one additional criterion. Because we conclude the Petitioner has satisfied that additional criterion, we will provide analysis on that requirement. However, it is unnecessary that we evaluate the remaining claimed criteria because the Petitioner is only required to satisfy three of the regulatory requirements.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

To meet the plain language requirements of this criterion, a petitioner must establish that they have performed in either a leading or critical role, and that the role was for an organization or establishment (or a division or department of an organization or establishment) having a distinguished reputation. A leading role should be apparent by its position in the overall organizational hierarchy and through the role's matching duties. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading. *See generally* 6 USCIS Policy Manual F.2(B)(2)(Appendices), <https://www.uscis.gov/policymanual>. If a critical role, the evidence must establish that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of the petitioner's role, but rather the petitioner's performance in the role that determines whether the role is or was critical. In addition, this criterion requires that the organization or establishment be recognized as having a distinguished reputation. USCIS policy reflects that organizations or establishments that enjoy a distinguished reputation are "marked by eminence, distinction, or excellence." *See generally id.* (citing to the definition of *distinguished*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/distinguished>). The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The Director stated the evidence demonstrates the Petitioner performed a leading and/or critical role for his employer, [REDACTED] but the evidence did not establish this company held a distinguished reputation. On appeal, the Petitioner provides additional evidence regarding this company including that in 2021 it was recognized as the [REDACTED] construction company in Brazil, and in 2020 it was ranked as the [REDACTED] best company in the field of civil engineering in Brazil. In addition, in 2018 and 2019, the company was awarded the BIM SIM Seal of Excellence by the [REDACTED] [REDACTED] which represents the highest recognition in Brazil for the field of Construction Information Modeling. The Petitioner also provided evidence of how [REDACTED] work within the construction sector has been extensively covered across a multitude of platforms including magazines, newspapers, blogs, and websites that emphasize their strong standing and influential role within the construction industry. The Petitioner submits additional evidence regarding the company's reputation, including an extensive list with supporting documentation showing the prizes and awards the company won.

In summary, the credible evidence provided on appeal sufficiently demonstrates that, more likely than not, the Petitioner performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The Petitioner has, therefore, overcome the only stated ground for denial of the petition; the failure to satisfy at least three evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x). However, granting the third initial criterion does not suffice to establish eligibility for the classification the Petitioner seeks. The Director must undertake a final merits determination to analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if they establish extraordinary ability in the Petitioner's

field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also* *Kazarian*, 596 F.3d at 1119–20.¹

III. CONCLUSION

Because the Petitioner has overcome the only stated ground for denial, we remand this proceeding so the Director can render a final merits determination in keeping with the *Kazarian* framework.

ORDER: The Director’s decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

¹ *See also* 6 USCIS Policy Manual F.2(B)(2), *supra* (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).